

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

ATA/3/2022

IN THE MATTER OF: TAPAS KUMAR DHAR (TRUSTEE)

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date: 16th August, 2022

Appearances:

Mr. Nirmalya Dasgupta, Adv.

Mr. R. L. Mitra, Adv.

Ms. Priyanka Dhar, Adv.

The Court: This application has been filed under Section 34 of the Indian Trusts Act, 1882 (the Act).

The applicant is the trustee of a private trust created by an Indenture dated March 21, 1936 (the trust). The trust was created by one Aloka Bala Dhar (since deceased) being a Hindu widow and mother of the petitioner. The petitioner herein is the sole trustee of the trust. The petitioner and his son Abhishek Dhar, are the only beneficiaries of the trust.

The trust is the owner of land situated at Bishnupur, District-Bankura alongwith a cinema hall built thereupon commonly known as the 'Milanshree Cinema'. It is contented that due to natural wear and tear over the passage of time, the structure of the cinema hall itself does not exist any longer.

The Deed of Trust stipulates that the beneficiaries being the petitioner and his son (who was a minor at that time of creation of the trust but has

since attained majority and is presently about 36 years old) shall hold the trust property and the same should be used absolutely for their exclusive benefit.

It is submitted by the petitioner that prior to filing the present application, the sole trustee held a meeting with his son on 25th March 2022 at the office of the trust. At the said meeting, it was unanimously decided that an application should be filed seeking inter alia seeking dissolution of the trust and a declaration that the trust property shall vest solely upon Abhishek Dhar.

By filing this application, the petitioner being the sole trustee with the consent of the beneficiary, his son, is seeking leave to dissolve the trust and a further declaration that the ultimate beneficiary namely Abhishek Dhar be the sole owner of the trust property.

Section 77(c) of the Act permits a trust to be extinguished in the event where the fulfillment of its purpose has become impossible due to the destruction of trust property or otherwise. In this case, the petitioner submits that the cinema hall is no longer in existence and is not generating any income whatsoever. Moreover, substantial expenditure is being incurred in making payment of municipal taxes and other outgoings. Thus, the purpose of the trust has otherwise become impossible to perform due to the destruction of the cinema hall.

It is also contended that Section 78 (a) of the Act provides that a trust may be revoked where all the beneficiaries are competent to contract by their consent. In this case, since Abhishek Dhar has attained the age of

majority and is competent to contract in the eye of the law and has given his free and full consent for revocation of the trust.

Section 34 of the Act empowers a trustee to apply to the Court for its opinion, advice, or direction relating to questions arising in respect of the management or administration of the trust property, other than questions involving any detail or difficulty, without instituting a suit. [*Sanjay Kilachand v Suresh Tulsidas Kilachand* (2009) SCC OnLine Bom 839].

In my view, this application does not involve any complicated issue surrounding the rights of the parties nor any dispute in respect of construction or interpretation of the Deed of Trust. Moreover, the reliefs sought for fall within the scope and ambit of section 34 of the Act. It is more a question of practicality and commercial viability in the light of extant circumstances and keeping in mind the intent of the settlor and the interests of the beneficiary. In *Commissioner of Wealth-Tax vs. Aditya Vikram Birla* reported in (1994) SCC OnLine Cal 320 it has been held as follows:

14. “Under section 78 of the Indian Trusts Act, the beneficiary or the beneficiaries can end a Trust by accelerating the distribution of the corpus if the beneficiaries are competent to contract. Clause (a) of section 78 says that a Trust otherwise created than by will can be revoked, where all the beneficiaries are competent to contract—by their consent; no doubt, the provisions postulate plurality of beneficiaries but the same principle shall also apply where the beneficiary is a single person.”

This decision has subsequently been followed by the Full Bench of the Kerala High Court in *Commissioner of Income-Tax, Cochin v M/S. Nelson Trust* reported in (2008) SCC OnLine Ker 434.

In my opinion, in the facts and circumstances of this case, the ingredients permitting revocation of the trust are fulfilled. Moreover, I find that it is just and equitable to dissolve the trust. Such directions are also necessary to preserve the beneficial interest. Hence, the entire trust property shall vest upon Mr. Abhishek Dhar forthwith being the sole and ultimate beneficiary. I also find that these directions are in consonance with the ultimate wish of the settlor. In passing the aforesaid directions, I do not find that there is any deviation in any manner whatsoever from the original intent of the settlor. Accordingly, there shall be an order in terms of prayers (a) and (b) of the Notice of Motion.

With the aforesaid directions, ATA 3 of 2022 stands disposed of.

(Ravi Krishan Kapur, J.)